

MARION BIRCH

IBLA 81-81

Decided March 30, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting for purposes of recordation appellant's lode mining claims. N MC 37217 through N MC 37232.

Vacated and Remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Generally

The Bureau of Land Management may require maps of mining claims meeting the requirements of 43 CFR 3833.1-2(c)(5) before accepting the recordation of the claims under 43 U.S.C. § 1744 (1976). However, where the record suggests that the claimant may have complied, the decision declaring her claims abandoned will be vacated and the case remanded.

APPEARANCES: Marion Birch, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Marion Birch has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated October 14, 1980, which rejected her filing of notices of location for lode mining claims, 1/ and declared the claims null and void pursuant to the requirements set forth in section 314 of the Federal Land Policy and Management Act of

---

1/ The mining claims are situated in groups as follows:

|                 |                  |
|-----------------|------------------|
| Ari-Mex #2-#5   | N MC 37217-37220 |
| Ari-Mex #7-#10  | N MC 37221-37224 |
| Ari-Mex #12-#15 | N MC 37225-37228 |
| X-1-X-4         | N MC 37229-37232 |

1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulations at 43 CFR 3833.1-2.

The claims in question were located between August 31 and September 26, 1978, and filed with BLM on November 1, 1978. After receiving her notices BLM, by letter dated March 20, 1980, requested that she sketch in the approximate location of her claims on a map attached to the letter. By a second letter dated August 1, 1980, BLM reiterated its request. Appellant was informed that the requested information should be submitted within 30 days.

On October 14, 1980, BLM issued its decision which stated in part:

Additional information which was requested to complete the recordation process was not received from you. The map you filed with this office was inadequate for our needs. A map was returned to you by certified mail along with a letter which you received on August 7, 1980. We asked you to please sketch in the approximate location of the claims on the map and please return it to us. Because we cannot complete the recordation process without sufficient information, the claims are rejected. [Emphasis added.]

On appeal appellant asserts that an updated map was completed and placed in the United States mails on August 10, 1980.

[1] Appellant was required to record the mining claims in the manner set out at 43 CFR 3833.1-2. Failure to record the claims properly will result in a determination that the claims are abandoned and therefore void. 43 CFR 3833.4(a). The particular requirement with which the State Office informed appellant she did not comply is set out at 43 CFR 3833.1-2(c)(6) as follows:

For all claims or sites located on surveyed or unsurveyed land, either a topographic map published by the U.S. Geological Survey on which there shall be depicted the location of the claim or site, or a narrative or sketch describing the claim or site with reference by appropriate tie to some topographic, hydrographic or man-made feature. Such map, narrative description or sketch shall set forth the boundaries and positions of the individual claim or site with such accuracy as will permit the authorized officer of the agency administering the lands or the mineral interests in such lands to identify and locate the claim on the ground. More than one claim or site may be shown on a single map or described in a single narrative or sketch if they are located in the same general area, so long as the individual claims or sites are clearly identified; and

We have held that BLM may require a mining claimant to supplement his initial filing of recording documents with additional information including a description of the lands claimed. Where BLM has so

requested and the claimant has failed to provide the information necessary to complete the recording process, we would ordinarily be disposed to affirm BLM's decision to treat the claims as unrecorded and, therefore, abandoned; particularly where BLM has made its request twice without receiving the information which it required. Walter Everly, 52 IBLA 58 (1981).

However, the record in this case is incomplete. As noted in the statement emphasized in the quotation from the BLM opinion, supra, appellant had submitted a map which BLM held was inadequate. Yet the record before us does not contain any such map bearing a BLM receipt/date stamp which predates the decision of October 14, 1980, which refers to it. Obviously, that map is not available for us to review so that we might make an independent judgment of its adequacy. Moreover, in a letter written to appellant on November 4, 1978, concerning these recordings, BLM stated, "We are in receipt of your certificate(s) of location and map \* \* \*." (Emphasis added.) That letter makes no mention of the map's inadequacy, but instead requests data concerning the recording of the certificates of location in the county recorder's office. This evinces that appellant did indeed file a map when she filed her location notices.

Under the circumstances, we are obliged to conclude that the timely-filed map, however adequate or inadequate it may have been, has been lost by BLM. Accordingly, BLM should consider the sketch maps submitted by appellant with her appeal. If these, too, are regarded as inadequate, BLM should once more provide appellant with a map upon which she must depict the locations of the several claims and return it to BLM by a specific date, failing which the claims will be treated as unrecorded and abandoned.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case remanded to the Nevada State Office for further action consistent herewith.

Edward W. Stuebing  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Gail M. Frazier  
Administrative Judge

